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Attorneys for Plaintiff PRAGER UNIVERSITY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PRAGER UNIVERSITY,

Plaintiff,

vs.

GOOGLE INC., a Delaware corporation,  
YOUTUBE, LLC, a Delaware limited liability  
company, and DOES 1-25,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF, AND  
DECLARATORY JUDGMENT**

**JURY TRIAL DEMANDED**

Trial Date: None Set

1 Plaintiff Prager University (“PragerU”) brings this complaint for damages and equitable relief  
2 against Defendants YouTube, LLC (“YouTube”) and its parent company, Google Inc. (Google),  
3 collectively referred to as “Google/YouTube” or “Defendants,” unless otherwise specified.

4 **INTRODUCTION AND PREFATORY STATEMENT**

5 1. PragerU brings this lawsuit to stop Google/YouTube from unlawfully censoring its  
6 educational videos and discriminating against its right to freedom of speech solely because of  
7 PragerU’s political identity and viewpoint as a non-profit that espouses conservative views on current  
8 and historical events. Google/YouTube have been discriminating and censoring, and continue to  
9 discriminate and censor educational videos uploaded or posted to the YouTube platform through the  
10 arbitrary and capricious use of “restricted mode” and “demonetization” viewer restriction filters that  
11 purportedly are intended to prohibit or limit access of “inappropriate” content to prospective public  
12 viewers based on certain viewer characteristics, including the age of the viewer.

13 2. Google/YouTube operate the largest forum for the general public to participate in  
14 video based expression and exchange of speech in California, the United States, and the world.  
15 Indeed, Google/YouTube has created the largest forum for video based speech by members of the  
16 general public in the history of the United States and the world. The total number of people who  
17 currently use the YouTube service exceeds 1.3 billion people and more than 30 million members of  
18 the general public visit the platform every day. Four hundred (400) hours of videos are uploaded to  
19 the service every hour and the total number of hours in which people watch videos on YouTube is  
20 estimated to be 3.25 billion. One report estimated that 10,113 YouTube videos generated over  
21 1 billion views and the average number of mobile YouTube views is estimated to be about 1 billion  
22 per day and YouTube videos can be navigated in at least 76 different languages. Indeed more video  
23 content has been uploaded to Google/YouTube by public users than has been created by the major  
24 U.S. television networks in 30 years.

25 3. In so doing, Google/YouTube hold YouTube out to the public as a forum intended to  
26 defend and protect free speech where members of the general public may speak, express, and  
27 exchange their ideas. YouTube plays a role of a public forum where, based on the number of views,  
28

1 likes, and subscriptions, new celebrities emerge and new ideas are popularized. And  
2 Google/YouTube have represented that their platforms and services are intended to effectuate the  
3 exercise free speech among the public. According to Google/YouTube “voices matter” and YouTube  
4 is “committed to fostering a community where everyone’s voice can be heard.”

5 4. As applied to PragerU, Google/YouTube use their restricted mode filtering not to  
6 protect younger or sensitive viewers from “inappropriate” video content, but as a political gag  
7 mechanism to silence PragerU. And Google/YouTube do this not because they have identified video  
8 content that violates their guidelines or is otherwise inappropriate for younger viewers, but because  
9 PragerU is a conservative nonprofit organization that is associated with and espouses the views of  
10 leading conservative speakers and scholars. This is speech discrimination plain and simple:  
11 censorship based entirely on the perceived identity and political viewpoint of the speaker not on the  
12 content of the speech. Google/YouTube’s use of restricted mode filtering to silence PragerU violates  
13 its fundamental First Amendment rights under both the California and United States Constitutions,  
14 constitutes unlawful discrimination under California law, is a misleading and unfair business practice,  
15 and breaches the warranty of good faith and fair dealing implied in Google/YouTube’s Terms of Use,  
16 including their guidelines and policies for restricted access filtering of video content.

17 5. Furthermore, Google/YouTube’s purported use of vague, overbroad, and subjective  
18 criteria, including YouTube’s Terms of Use and Community Guidelines, to justify their censorship  
19 decisions constitute facially invalid restrictions on speech that lack objective criteria, are misleading,  
20 and/or are discriminatory, and, as a result, allow Google/YouTube to censor or restrict political  
21 speech at their whim based purely their subjective beliefs, political animus, and unfettered and  
22 unbridled discretion in violation of federal and state law.

23 6. And while Google/YouTube may lawfully regulate or restrain speech in certain  
24 circumstances to the extent that such restrictions constitute reasonable and objective time, manner,  
25 place restrictions that comport with federal and California legal standards for the regulation of  
26 speech, it may not do so at will without any restrictions or in an arbitrary or capricious manner that  
27 provides them with unbridled discretion to discriminate against a speaker based on her or his identity  
28

1 or political viewpoint. Nor can Google/YouTube rely on criteria, like their Terms of Use or  
 2 Community Guidelines, that are so vague, broad, or undefined that they may serve or be used as a  
 3 pretext to censor or discriminate against speakers because of a bias or animus towards political  
 4 identity or viewpoint.

5 7. PragerU is an educational nonprofit founded in 2011 by Dennis Prager, a conservative  
 6 talk show host. Its mission is to provide educational and news based platforms to promote open and  
 7 balanced discussions of historical or current issues from a conservative perspective. There is  
 8 absolutely nothing “inappropriate” about the content of the PragerU videos censored by  
 9 Google/YouTube. The videos utilize news interview or animation formats to discuss current and  
 10 historical events and issues, including, by way of example only, discussions of the history of the  
 11 Korean War, legal decisions by courts including landmark rulings of the United States Supreme  
 12 Court, and trending current events such as foreign affairs, male-female differences, environmental  
 13 issues and other topics discussed on university campuses. The videos do not contain any profanity,  
 14 nudity, or otherwise inappropriate “mature” content. The censored videos fully comply with the  
 15 letter of YouTube’s Terms of Use and Community Guidelines.

16 8. As set forth below, a review and comparison of Prager U’s videos with unrestricted  
 17 videos produced and posted by other groups with different political identities shows that  
 18 Google/YouTube’s use of restricted mode filtering to censor PragerU is arbitrary, capricious, and  
 19 bears no relationship to the actual content of the videos. Indeed, one need only compare the censored  
 20 PragerU videos with those that are produced by speakers with different political identities or  
 21 viewpoints to understand just how arbitrary and discriminatory Google/YouTube’s conduct is. To  
 22 that end, a table<sup>1</sup> comparing the content and subject matter of the censored PragerU videos with  
 23 uncensored videos discussing the same issues by speakers and channels like Crash Course, NowThis,  
 24 AJ+ (Al Jazeera), BuzzFeed, Bill Maher, TedTalkx, the History Channel, and many others, some of  
 25

26 <sup>1</sup> For convenience, two “Tables of Comparison” are embedded in Paragraphs 70 and 72, respectively  
 27 each of which provides a summary of the subject matter of both censored PragerU videos and non-  
 28 censored videos from other speakers along with website hyperlinks that allow the reader to view and  
 compare the full content of the respective videos.

1 which contain profanity and graphic depictions of mature content, leaves little doubt that  
2 Google/YouTube are not restricting PragerU's videos because of noncompliance with any guidelines  
3 or terms of use, but are discriminating against and censoring PragerU because of its political identity  
4 or viewpoint not the content of its speech.

5       9. Since the inception of Google/YouTube's censorship of PragerU videos, first  
6 discovered by PragerU staff members in July 2016, Google/YouTube have failed to offer any  
7 reasonable or consistent explanation for why the content of those videos is subject to restricted  
8 content filtering. Instead, Google/YouTube have repeatedly stated that Google/YouTube's automatic  
9 filtering search algorithm and their "review teams" have flagged some unspecified or unidentified  
10 video content as "inappropriate." This is telling because despite the existence of purported guidelines  
11 and criteria utilized by both the algorithm and review teams, Google/YouTube's censoring criteria are  
12 intentionally vague, undefined, and broad and are designed to allow it to exercise unfettered,  
13 unilateral, unbridled, and purely subjective discretion as to what is and is not appropriate. In so  
14 doing, Google/YouTube are censoring PragerU's videos not based on any objective finding of  
15 inappropriate material, but on their purely subjective perception of what theydeems politically correct  
16 and incorrect. In short, Google/YouTube created a purely subjective and unspecific criteria for  
17 determining what is and is not appropriate in order to justify censorship based not on content, but the  
18 political viewpoint and perceived identity of the speaker.

19       10. PragerU is not the first video blogger or "vlogger" to be discriminated against by  
20 Google/YouTube because of the speaker's perceived identity. On March 19, 2017, Google/YouTube  
21 publicly admitted that they improperly censored videos using their restricted mode filtering that were  
22 posted or produced by members of the LGBTQ community based on the identity and orientation of  
23 the speaker rather than the content of the video. In response to complaints from the LGBTQ  
24 community and other civil rights critics, Google/YouTube removed all restricted filtering on videos  
25 posted or produced by LGBTQ members and groups, and changed their policy, filtering algorithm,  
26 and manual review policies to ensure that videos posted by LGBTQ vloggers were not being censored  
27 solely because of the identity of the speaker.  
28

1           11.     Such a censorship regime cannot pass muster under the First Amendment and is  
2 discriminatory and unlawful under California law. Among other things, it provides Google/YouTube  
3 with unfettered and unbridled discretion to impose their own political views and values on speakers  
4 without any objective criteria for evaluating what is and is not appropriate and thereby censors speech  
5 based on animus towards the speaker's political viewpoint rather than the appropriateness of the  
6 content of the video. It also constitutes intentional discrimination by Google/YouTube based on the  
7 religious, political, or sexual orientation beliefs of the speaker. It also violates the warranty of good  
8 faith and fair dealing implied in the Terms of Use and video posting guidelines and policies that  
9 PragerU was required to agree to in order to use the YouTube site. And they do all of this in  
10 connection with their control and management of what is arguably the largest public forum for the  
11 expression and exchange of ideas and speech that has ever been available to the public in California,  
12 the United States, and ultimately the world—one to which Google/YouTube invite the public to  
13 express themselves in all manner of speech, and to engage with such speech through viewing and  
14 commenting.

15           12.     Despite telling the public that Google/YouTube "products are platforms for free  
16 expression," no such good faith treatment has been afforded PragerU. PragerU has endeavored with  
17 patience and civility to navigate the red tape process for removing restricted filtering. PragerU has  
18 fully complied with Google/YouTube's demands that PragerU formally seek reconsideration of the  
19 "inappropriate" designation of its videos. To that end, PragerU in good faith provided  
20 Google/YouTube with specific examples of its videos along with comparisons of other similar  
21 material that do not share an inappropriate designation from other producers. As of this date,  
22 however, at least 37 PragerU videos continue to be censored by restricted mode filtering. And when  
23 it requested that Google/YouTube treat these and other videos in the same manner as those from other  
24 vloggers, including those of LGBTQ vloggers, Google/YouTube refused, on the pretextual ground  
25 that manual reviewers had determined that educational content ranging from the legal creation of  
26 Israel and the history of the Korean War to the idea of diversity of thought on college campuses  
27 contained "inappropriate content."  
28

1           13. That finding is absurd, arbitrary, capricious, and devoid of any rational basis. When  
2 compared with the litany of unrestricted videos posted by other speakers that contain similar or  
3 identical content and differ only in the perspective or identity of the speaker, Google/YouTube's  
4 censorship of PragerU videos smacks of discrimination and animus arising solely from the political  
5 identity and perspective of its speakers, some of whom are identified with and espouse views and  
6 analysis that are considered to be "conservative" on the American political spectrum.

7           14. Not only is Google/YouTube's censorship not based on the content of the PragerU  
8 videos but the "inappropriate" designation falsely and unfairly stigmatizes PragerU. It renders  
9 prospective viewers ineligible to watch PragerU programming from public as well as private  
10 workplace or home computer stations. It prevents access to educational content by students whose  
11 computer use may be subject to parental controls intended to shield the student from truly  
12 inappropriate material, not political or educational discourse of current or historical events. It  
13 precludes PragerU from receiving any revenue from advertisements that would otherwise accompany  
14 content not designated as "inappropriate." And it allows Google/YouTube's virtual monopoly power  
15 over video posting and viewership market to manipulate, bully, and falsely denigrate legitimate  
16 political and educational speakers by subjectively designating their speech as "inappropriate," solely  
17 because Defendants do not like or agree with speakers' political identity or point of view.

18           15. This is free speech discrimination: censorship based not on the content of the speech  
19 but the perceived identity and viewpoint of the speaker. The law categorically prohibits this type of  
20 identity and viewpoint based discrimination and censorship. And the fact that this discrimination  
21 emanates from a company that holds itself out to the public as a committed defender and protector of  
22 free speech makes Google/YouTube's conduct that much more unacceptable and dangerous. In sum,  
23 Google/YouTube's use of their unfettered power over the worldwide web to censor the thoughts and  
24 speech of speakers based solely on their political identity or viewpoint is legally indefensible and  
25 violates the California and United States Constitutions, unfair business practice laws, and their  
26 policies and terms of use.



**PARTIES**

16. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 15.

17. Plaintiff PragerU is an educational 501(c)(3) nonprofit company with its principal place of business in the Los Angeles County, California.

18. Defendant Google Inc. is a for profit, public corporation incorporated under the laws of the State of Delaware, with its principal place of business in Mountain View, California and regularly conducts business throughout California, including Santa Clara County. PragerU is informed and believes, that at all relevant times, Defendant Google Inc. acts as an agent of Defendant YouTube, LLC, and controls or participates in controlling and restricting speech on the YouTube service or platform.

19. Defendant YouTube, LLC is a for profit limited liability corporation, wholly owned by Google Inc., and organized under the laws of the State of Delaware. YouTube's principal place of business is Mountain View, California and it regularly conducts business throughout California, including Santa Clara County, California. Defendant YouTube, LLC operates the largest and most popular internet video viewer site, platform, and service in California, the United States, and the world and holds itself out as one of the most important and largest public forums for the expression of ideas and exchange of speech available to the public. PragerU is informed and believes that at all relevant times Defendant YouTube, LLC acts as an agent of Defendant Google Inc. and uses, relies on, and participates with Defendant Google Inc. in restricting speech on the YouTube site, platform, or service.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Does 1 through 25, inclusive, are presently unknown to Plaintiff, and for that reason these defendants are sued by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Doe defendants is in some way legally responsible for the violations of law and injuries and harm caused as alleged herein. If and when appropriate, Plaintiff will seek leave of court to amend this complaint when the true names and capacities of said defendants are known.



21. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, each of the defendants was the agent and representative of the other defendants, acting within the purpose and scope of said agency and representation, and that each of the defendants was and is authorized to ratify and undertake the conduct of each of the other defendants as alleged herein.

### **JURISDICTION AND VENUE**

22. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 21.

23. This Court has jurisdiction over this matter because Defendants transacted business and committed the acts complained of herein within Santa Clara and Los Angeles Counties, during the times referenced herein, and the contract at issue was largely performed in California, including Santa Clara County.

24. This is a civil action arising under the First Amendment of the Constitution of the United States, as subsequently set forth, and this court has jurisdiction of this action by reason of 28 U.S.C. §§ 1331, 1338, 1343, and 42 U.S.C. §§ 1983, 1985, and 1988. This Court may award Plaintiff declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 1983, 2201-02, Rule 65 of the Federal Rules of Civil Procedure, and this Court's inherent equitable jurisdiction. The court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367.

25. Venue is proper in this judicial district pursuant to the forum selection clause set forth in the Terms of Use issued by Google/YouTube and 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims raised in this lawsuit occurred in this district, and because all Defendants are located in and operate in Santa Clara and Los Angeles Counties.

### **FACTS COMMON TO ALL CLAIMS**

26. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 25.

27. Google/YouTube control and regulate the world's largest forum in which the public may post and watch video based content and information for free. Consistent with their express "mission [] to organize the world's information and make it universally accessible and useful,"

1 Google/YouTube provide a forum for members of the public to connect, inform, and inspire others  
2 across the globe and acts as a distribution platform for original content creators, viewers, and  
3 advertisers large and small. YouTube is one of the top three most visited websites globally, (along  
4 with Facebook and Google) and, as of 2017, the site effectively controls and regulates an internet  
5 forum used by over one billion users each month—almost one out of every two people on the  
6 Internet. Eighty-five percent (85%) of the U.S. internet audience watches videos online and more  
7 than 500 million hours of videos are watched on YouTube each day. Indeed more video content has  
8 been uploaded to Google/YouTube by public users than has been created by the major U.S. television  
9 networks in 30 years.

10 28. In so doing, YouTube holds itself out as the largest public forum for video based  
11 speech in California, the United States, and the world. YouTube plays a role of a public forum  
12 where, based on the number of views, likes, and subscriptions, new celebrities emerge and new ideas  
13 are popularized. Indeed, on its own “Official Blog,” YouTube has itself stated that its “mission” is to  
14 “give people a voice” in a “place to express yourself” and in a “community *where everyone’s voice*  
15 *can be heard.*” In totality, YouTube claims to be “one of the largest and most diverse collections of  
16 self-expression in history,” giving “people opportunities to share their voice and talent *no matter*  
17 *where they are from or what their age or point of view.*” See, e.g., <https://youtube.googleblog.com/>  
18 (YouTube Official Blog: Broadcast Yourself).

19 29. Despite their control and regulation of one of the largest forums for public speech and  
20 expression in California, the United States, and the world, Google/YouTube regulate and censor  
21 speech as if the laws governing free speech and commerce do not apply to it. In so doing, Defendants  
22 believe that they have unfettered, unbridled, and unrestricted power to censor speech or discriminate  
23 against public speakers at their whim for any reason, including their animus toward and political  
24 viewpoints of their public users and providers of video content, because Defendants are for profit  
25 organizations rather than governmental entities.

26 30. Google/YouTube are wrong. As the California Supreme Court has stated: “[t]he idea  
27 that private property can constitute a public forum for free speech if it is open to the public in a  
28

manner similar to that of public streets and sidewalks” has long been the law in California. *Fashion Valley Mall, LLC v. N.L.R.B.* (2007) 42 Cal.4th 850, 858. The United States Supreme Court also recognized more than a half-century ago that the right to free speech guaranteed by the First Amendment to the United States Constitution can apply even on privately owned property. One of the most important places to exchange and express views is cyberspace, particularly social media, where users engage in a wide array of protected First Amendment activity on any number of diverse topics. And because the “[i]nternet’s forces and directions are so new, so protean, and so far reaching,” however, the U.S. Supreme Court warned that the law must be conscious that what it says today about the characteristics of a forum or free speech medium may be obsolete tomorrow. *See Packingham v. North Carolina*, 137 S.Ct. 1730, 1735-38 (2017).

31. Where, as in the case of Google/YouTube, a private party operates as one of the largest internet forums for speech and expression in the history of the world and such forum is accessible to and freely used by the public in general, there is nothing to distinguish it from any other forum except the fact that title to the property on which the forum exists belongs to a private corporation. As the highest court in the nation has made clear, “[t]he more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.” *Marsh v. Alabama* (1946) 326 U.S. 501, 502-03, 66 S. Ct. 276.

32. Google/YouTube are no exception. Based on these fundamental principles and protections of liberty and free speech embedded in our laws, culture, and heritage, as well as the unlawful practices and conduct alleged herein, PragerU challenges Google/YouTube’s arbitrary and capricious use of their purported unfettered discretionary and unilateral authority to censor and regulate PragerU’s speech. PragerU has a fundamental right to speak and express its views to members of the public who visit or use YouTube in California (and elsewhere). Google/YouTube’s denial of PragerU’s right and ability to do so, therefore, must be redressed because such a denial violates the First Amendment of the California and U.S. Constitutions, the California Unruh Act and unfair competition laws, and the implied covenant of good faith and fair dealing of YouTube’s

1 policies and Terms of Use.

2 **A. Prager University**

3 33. Prager University, also known as PragerU, is a 501(c)(3) educational nonprofit digital  
4 media organization founded in 2011, by radio talk show host Dennis Prager and radio producer and  
5 screenwriter Allen Estrin. PragerU's mission is to present to and educate members of the public  
6 about current and historical issues and events of public interest and concern. In so doing, PragerU  
7 seeks to provide conservative viewpoints and perspectives on public issues that it believes are often  
8 overlooked or ignored due to the dominance of liberal and left wing perspectives in higher education  
9 in the United States. PragerU considers itself a resource for every American, and every person in the  
10 world who values liberty, and promotes educational discourse on topics that help viewers to better  
11 understand and explain the common values from the American conservative perspective.

12 34. The organization is not an academic institution and does not offer certifications or  
13 diplomas. Instead, PragerU depends on charitable donations from the public to, among other  
14 services, promote educational videos. The videos seek to take the best ideas from the best minds and  
15 distill them down to short focused discussions, usually lasting about five minutes. Producers will also  
16 add graphics and animation in an attempt to create the persuasive, entertaining, and educational based  
17 video content that espouses viewpoints and perspectives based on conservative values, including core  
18 values of freedom of speech, a free press, free markets and strong protections of those values. Since  
19 its inception, PragerU has posted more than 250 of these videos on the YouTube channel.

20 **B. Google/YouTube**

21 35. The YouTube channel was founded in 2005 in San Bruno, California and is now the  
22 largest video-sharing website in the world. In 2006, Defendant Google bought YouTube for \$1.65  
23 billion and operates the channel as a Google subsidiary.

24 36. YouTube allows users to upload, view, rate, share, add to favorites, report, comment  
25 on videos, and subscribe to other users. Available content includes video clips, TV show clips, music  
26 videos, short and documentary films, audio recordings, movie trailers, live streams, and other content  
27 such as video blogging, short original videos, and educational videos. Most of the content on  
28

1 YouTube is uploaded by individuals, but media corporations including CBS, the BBC, Vevo, and  
2 Hulu also offer some of their material via YouTube as part of the YouTube partnership program.  
3 Unregistered users can only watch videos on the site, while registered users are permitted to upload  
4 an unlimited number of videos and add comments to videos.

5 37. Google/YouTube then monetize speakers' intellectual property and viewers' interests  
6 by selling advertisements; some of those advertisements come from the speakers themselves, who  
7 pay for their videos or channels to be "featured" or publicized. In addition, YouTube offers  
8 subscriptions in which people pay ongoing fees to view videos on YouTube without advertisements.  
9 In total, YouTube earned \$9 billion in revenue in 2015, and is estimated to earn \$27 billion annually  
10 by 2020.

11 38. YouTube earns advertising revenue from Google AdSense, a program which targets  
12 ads according to site content and audience. The vast majority of its videos are free to view, but there  
13 are exceptions, including subscription-based premium channels, film rentals, as well as YouTube  
14 Red, a subscription service offering ad-free access to the website and access to exclusive content  
15 made in partnership with existing users. As of February 2017, there are more than 400 hours of  
16 content uploaded to YouTube each minute, and one billion hours of content are watched on YouTube  
17 every day. As of August 2017, the website is ranked as the second-most popular site in the world by  
18 Alexa Internet, a web traffic analysis company, and retains a virtual monopoly power over the  
19 domestic and international internet video posting markets.

20 39. Young people, who are disproportionately affected by the imposition of "restricted  
21 mode" on PragerU videos, are particularly drawn to YouTube. In an average month, eight out of 10  
22 18- to 49-year olds watch YouTube. Television watching time among that demographic dropped,  
23 while it went up on YouTube by 74%. YouTube now reaches more of that demographic than any  
24 broadcast or cable network. Millennials watch two-thirds of all premium online video content via  
25 YouTube, across all devices.

26 40. Defendants' platform is now the world's largest public forum for the expression and  
27 exchange of ideas and speech contained in video based formats. The YouTube internet channel is  
28

1 used by over one billion users, or almost one third of total internet viewers, to express ideas and  
 2 exchange speech through the posting videos by members of the public. YouTube is now one of the  
 3 top three most visited websites globally, (along with Facebook and Google). 85% percent of the U.S.  
 4 internet audience watches videos online and more than 500 million hours of videos are watched on  
 5 YouTube each day. And more video content has been uploaded to Google/YouTube by public users  
 6 than that created by the major U.S. television networks in 30 years.

### 7 **1. YouTube's Restricted Content Mode**

8 41. In 2010, Google/YouTube created and introduced "Restricted Mode." According to  
 9 the Defendants, Restricted Mode is an "optional feature to help institutions like schools as well as  
 10 people who wanted to better control the content they see on YouTube." It was created to "provide  
 11 viewers who wanted to better control the content they see on YouTube with an option to choose an  
 12 intentionally limited YouTube experience." Viewers can choose to turn Restricted Mode on for their  
 13 personal accounts. It may also be turned on for computers in libraries, schools, and other public  
 14 institutions by the institution's system administrator. Viewers who turn on Restricted Mode cannot  
 15 see comments on videos. Google/YouTube estimates that about 1.5-2 percent of YouTube's daily  
 16 views come from people who have Restricted Mode turned on. Google/YouTube asserts, however,  
 17 that Restricted Mode is not "about numbers," but "about the principle of anyone having access to  
 18 important content and different points of view."

19 42. Google/YouTube restrict content in Restricted Mode based on certain "Restricted  
 20 Mode Guidelines." Accordingly, the Guidelines ensure that videos containing potentially mature  
 21 content will not be shown to viewers who have Restricted Mode turned on. Google/YouTube use  
 22 five criteria for determining whether such content warrants exclusion from Restricted Mode:  
 23 (1) Talking about drug use or abuse, or drinking alcohol in videos; (2) Overly detailed conversations  
 24 about or depictions of sex or sexual activity; (3) Graphic descriptions of violence, violent acts, natural  
 25 disasters and tragedies, or even violence in the news; (4) Videos that cover specific details about  
 26 events related to terrorism, war, crime, and political conflicts that resulted in death or serious injury,  
 27 even if no graphic imagery is shown; (5) Inappropriate language, including profanity; and (6) Video  
 28

1 content that is gratuitously incendiary, inflammatory, or demeaning towards an individual or  
2 group. Google/YouTube concedes, as it must, that there is a risk that some important content could  
3 be lost if these rules and criteria are applied without context.

4 43. According to Google/YouTube, Restricted Mode operates to restrict access to videos  
5 in two ways. First, Defendants use an automated filtering algorithm that examines certain “signals”  
6 like the video’s metadata, title, and the language used in the video. The algorithm looks for certain  
7 “signals” to determine if rules or criteria are violated so as to warrant segregation in Restricted Mode.  
8 Second, a video can be subject to Restricted Mode filtering if it is “flagged” as “inappropriate” by  
9 public viewers, or what Google/YouTube call the “community.” According to Google/YouTube,  
10 however, a video is not automatically filtered into Restricted Mode if it is flagged by the community.  
11 Instead, flagged videos are reviewed by a “team” for “violations of our Community Guidelines.”

12 44. When it comes to content-based restrictions that result from community flagging,  
13 Google/YouTube’s “Community Guidelines” are not a beacon of clarity. Rather, the Guidelines  
14 provide what Google/YouTube describe as “some common-sense rules that’ll help you steer clear of  
15 trouble.” The rules contain seven criteria: (1) “Nudity or sexual content” that contains pornography  
16 or sexually explicit content; (2) “Violent or graphic content” intended to shock, sensationalize, or be  
17 disrespectful; (3) “Harmful or dangerous content” that encourages others to do things that might hurt  
18 someone, including harmful or dangerous acts; (4) “Hateful Content” that condones violence against  
19 individuals or groups based on race or ethnic origin, religion, disability, gender, age, nationality,  
20 veteran status, or sexual orientation/gender identity, or whose primary purpose is inciting hatred on  
21 the basis of these core characteristics; (5) “Copyright” violations where the content was not made by  
22 or authorized for use by the user; (6) “Threats” where content includes predatory behavior, stalking,  
23 threats, harassment, intimidation, invading privacy, revealing other people’s personal information,  
24 and inciting others to commit violent acts or to violate the Terms of Use; and (7) “Spam, misleading  
25 metadata, and scams” creating or involving misleading descriptions, tags, titles, or thumbnails in  
26 order to increase views. Defendants also discourage the posting of large amounts of untargeted,  
27 unwanted or repetitive content.  
28



45. Google/YouTube also admit that, on some occasions, a video may not violate the Community Guidelines but may still be subject to restricted mode filtering because Google/YouTube subjectively deems the content not to be appropriate for everyone. In such cases, Google/YouTube may place an age restriction when notified of the content. Age-restricted videos are not visible to users who are logged out, are under 18 years of age, or have Restricted Mode enabled. When evaluating whether content is appropriate for all ages, Defendants restrict: (1) “Vulgar language” involving sexually explicit language or excessive profanity in the video or associated metadata; (2) Violence and disturbing imagery whether real, dramatized or fake violence that may not be suitable for all ages; (3) Nudity and sexually suggestive content containing nudity or dramatized sexual conduct may be age-restricted when the context is appropriately educational, documentary, scientific or artistic and content featuring individuals in minimal or revealing clothing may also be age-restricted if intended to be sexually provocative, but do not show explicit content.; and (4) Portrayal of harmful or dangerous activities involving content that intends to incite violence or encourage dangerous or illegal activities that have an inherent risk of serious physical harm or death. And to further guide application of this criteria in deciding whether to age restrict a video, Google/YouTube list some but not all of the factors considered.

46. Google/YouTube provide a limited appeal process for any users who believe that the application of age restriction filtering to the user’s video contents is unwarranted or inappropriate. According to Google/YouTube, users have the ability to appeal an age-restriction. If a video is age-restricted, the user technically can appeal the decision to an account Video Manager page by clicking on the “Appeals Link” next to the age-restricted video. A YouTube “team” will then review the user’s request and take further action if, in their subjective view, further action is appropriate. But Google/YouTube restrict a user’s ability to appeal the age restriction on the video only once.

## **2. Google/YouTube’s Problems With Restricted Mode Filtering**

47. The Restricted Mode filtering review process, including the so called “appeals process” are by no means beacons of clarity. Consequently, Google/YouTube have unfettered authority to restrict or censor videos based on highly subjective judgments by their reviewers and the

1 programming of their algorithms and electronic review processes. Furthermore, Plaintiff PragerU is  
2 informed and believes that algorithmic and manual review processes are impacted or driven by  
3 Google/YouTube's political perspectives and agenda.

4 48. Consequently, Google/YouTube repeatedly make "mistakes in understanding context  
5 and nuances when it assesses which videos to make available in Restricted Mode." And on May 19,  
6 2017, Google/YouTube admitted that the Restricted Mode "feature isn't working the way it should  
7 and we're going to fix it." For instance, Google/YouTube admit that it got "it wrong" when they  
8 censored videos like Ash Hardell's "Her Vows," Calum McSwiggan's "Coming Out To Grandma,"  
9 Jono and Ben's "Woman interrupted during BBC interview," and Tegan and Sara's "BWU  
10 [OFFICIAL MUSIC VIDEO]."

11 49. Google/YouTube also admitted that they wrongly censored videos posted by members  
12 of the LGBTQ community because of a purported engineering problem that was wrongly filtering  
13 LGBTQ videos. Subsequent to that admission, Defendants went further to accommodate LGBTQ  
14 users by having a team that included YouTube's CEO Susan Wojcicki meet with many of them and  
15 then revising their policies and review protocols and rewriting guidelines that seek to "clarify its  
16 position by specifically allowing personal accounts from victims of discrimination or violent hate  
17 crimes, as long as they don't contain graphic language or content."

18 50. In response to growing criticism of arbitrary and capricious censorship decisions,  
19 Google/YouTube have told the public that they "must and will do a better job" in determining which  
20 videos should be segregated and censored from Restricted Mode. And, because of the subjective  
21 nature of their review criteria, Google/YouTube concede that even though videos don't violate  
22 policies, the video may still be restricted.

23 51. On April 27, 2017, Johanna Wright, VP of Product Management for YouTube, stated  
24 that Google/YouTube wanted to "clarify that Restricted Mode should not filter out content belonging  
25 to individuals or groups based on certain attributes like gender, gender identity, political viewpoints,  
26 race, religion or sexual orientation." Wright further promised users that while "Restricted Mode will  
27 never be perfect, [Google/YouTube] hope to build on [their] progress so far to continue making  
28

1 [their] systems more accurate and the overall Restricted Mode experience better over time.”

2 **3. Google/YouTube’s Censorship Of PragerU’s Videos**

3 52. PragerU is the latest victim of Google/YouTube’s restricted content filtering practices.  
4 Unlike other victims, however, the censorship of PragerU videos is not the result of an engineering  
5 problem or a loophole in guidelines. Rather, PragerU is the victim of intentional discrimination by  
6 Defendants based on Google/YouTube’s animus towards PragerU’s political identity and viewpoint.  
7 Furthermore, Google/YouTube seek to justify that animus and bias not by claiming that PragerU has  
8 violated YouTube’s restricted content guidelines or criteria, but by arguing that they retain unfettered  
9 discretion to censor any video content that they deem “inappropriate,” no matter how subjective,  
10 baseless, or arbitrary that decision is. Apparently Google/YouTube believe that they are exempt or  
11 somehow immune from the First Amendment’s strict prohibition against content-based restrictions on  
12 free speech under California as well as federal law. Google/YouTube are wrong and their policies  
13 and conduct towards PragerU violate that law on both a facial and as applied basis when it comes to  
14 censoring PragerU.

15 53. On or about August 5, 2016, PragerU, following Google/YouTube’s guidelines and  
16 protocol contacted its Google/YouTube account manager to request that 16 of its videos be removed  
17 from the age restricted content list and be made available to all viewers, including those who utilize  
18 Restricted Mode settings. For over one year, PragerU has worked patiently and cooperatively to try  
19 to resolve the censorship issues that comprise this Lawsuit. In response, Google/YouTube have  
20 provided vague, misleading, confusing, and often contradictory information that not only has  
21 prevented resolution of the issues, but constitutes further evidence and indicia that their restricted  
22 mode filtering applied to PragerU is based on Defendants’ intentional discrimination and animus  
23 towards users and speakers whose political identity and viewpoints do not comport with those of  
24 Google/YouTube.

25 54. On August 5, 2017, Google/YouTube responded by email saying that “Our Product  
26 Specialist reviewed this, and at this time the videos are not safe enough for Restricted Mode so they  
27 will remain as is and were correctly classified.” In that email correspondence, Google/YouTube  
28

1 admitted that they “aim to apply the same standards to everyone and we don’t censor anyone.”  
2 Google/YouTube informed PragerU that they were “more than happy to fix anything for you which  
3 might have been an error from our end.”

4 55. On September 21, 2016, PragerU followed up and requested information about what  
5 “specific actions” it could take to remove what was at the time a total of 21 videos on the restricted  
6 content list.

7 56. On that same day, Google/YouTube responded: “As mentioned in the previous emails,  
8 at this time, your videos aren’t appropriate for the younger audiences and hence they’re not appearing  
9 in the restricted mode search results. I’d recommend you to go through our Community Guidelines  
10 and align them with your content to see where it has violated.”

11 57. Google/YouTube’s response that they would not change the age restriction on all 21  
12 restricted PragerU videos was patently arbitrary, discriminatory, and an obvious pretext to justify  
13 illegally discriminating against PragerU because of its conservative political perspective and identity.  
14 As is obvious from a review of each of those videos (available by hyper link in the Table embedded  
15 at paragraph 72, *infra*), the videos were entirely “aligned” with the Community Guidelines and did  
16 not contain any content that could reasonably be construed as not appropriate for younger audiences.

17 58. Nonetheless, on October 19, 2016, PragerU in good faith followed up with  
18 Google/YouTube to advise Google/YouTube of the obvious: “after months of trying to get our videos  
19 removed from Restricted Mode (or at least get a clear explanation of what we can change to remove  
20 them), PragerU decided that its only recourse was to make this issue public.” PragerU went on “to  
21 once again ask that YouTube unrestrict the now 16 videos currently in Restricted Mode.”  
22 Furthermore, in compliance with the Google/YouTube appeals process, PragerU also requested “an  
23 explanation for why” certain videos were now “unrestricted,” including: “Why Are There Still  
24 Palestinian Refugees?”, “Are 1 in 5 Women Raped at College?”, “Is America Racist?”, “Don’t Judge  
25 Blacks Differently,” and “Commandment 6: Do Not Murder.”

26 59. On November 4, 2016, Google/YouTube responded: “The team is still investigating  
27 the issue and it’s taking longer than usual. I have requested the team to expedite the process and  
28

1 resolve as soon as possible.”

2         60. Then, on November 10, 2016, Google/YouTube responded only that “[a]t this time the  
3 videos have been algorithmically included in Restricted Mode and no manual action was needed.”

4         61. On December 5, 2016, PragerU sent a new request to appeal a removed video by a  
5 pro-Israeli Muslim activist entitled “Born to Hate Jews,” that discussed how best to resist hatred and  
6 anti-Semitism. Incredibly, Google/YouTube restricted the video as “hate speech.” Indeed, the video  
7 was anything but. In fact, it contained a thoughtful and important discussion of the origins and  
8 remedies for combatting hate speech by a Muslim man who supported the right of Israel to exist.  
9 Consequently, PragerU requested that the content restrictions be removed and that the failure to do so  
10 “is de facto censorship” that “will prevent hundreds of thousands, or millions of people from hearing  
11 its valuable message.”

12         62. Over the next year, multiple communications occurred between PragerU and  
13 Google/YouTube about the restriction of PragerU videos. During that period, PragerU was seeing  
14 more and more evidence that its videos were being restricted not for content, but for the political  
15 viewpoint or identity of the speaker.

16         63. In communications beginning on or about July 31, 2017, Google/YouTube conceded  
17 that they could not tell whether the PragerU videos had been restricted after a manual review or were  
18 censored only by the automated algorithm. Among other things, at Google/YouTube’s request,  
19 PragerU provided Defendants with a list of PragerU videos that had been restricted and a comparative  
20 list of videos that discussed the same topics but from liberal or left wing perspectives that were not  
21 restricted. Google/YouTube sent the comparative list of videos to a team for manual review.

22         64. On August 23, 2017, Max Pappas, a public policy staffer for Google/YouTube,  
23 notified PragerU that YouTube was rolling out some changes to its restricted mode filtering process  
24 but noted that the planned changes “should have no impact on your channel, and I double checked on  
25 that, but if they inadvertently do, let me know so I can help with any appeal.” In response, PragerU  
26 informed Google/YouTube that the “policies” were still impacting its content and the number of  
27 restricted videos had actually increased to 34.

65. Google/YouTube then wanted to know if, in addition to restricting content, PragerU videos were also being “demonitized” [sic] and prevented from running ads. PragerU responded with a list of over 50 videos that had either or both been restricted as to content and demonetized:

**Currently restricted (As of October 20, 2017):**

PragerU Live: Alan Dershowitz

Ami Horowitz Do White Americans Have White Privilege?

What’s Wrong with E-Cigarettes?

Why Isn’t Communism as Hated as Nazism?

Where Are the Moderate Muslims?

Ami Horowitz How Is Muslim Immigration to Sweden Working Out?

The Least Diverse Place in America

Ami Horowitz What’s Wrong with Socialism?

Dennis Prager Talks Politics With Gloria Alvarez and Felipe Moura Brasil

Why America Must Lead

What’s Holding the Arab World Back?

What Should We Do About Guns?

Immigrants! Don’t Vote for What You Fled

Is Islam a Religion of Peace?

Are the Police Racist?

Why Don’t Feminists Fight for Muslim Women?

Why Did America Fight the Korean War?

Who’s More Pro Choice: Europe or America?

What ISIS Wants

Are 1 in 5 Women Raped at College?

Islamic Terror: What Muslim Americans Can Do

Did Bush Lie About Iraq?

Who NOT to Vote For

1 Israel: The World's Most Moral Army  
2 Radical Islam: The Most Dangerous Ideology  
3 The Most Important Question About Abortion  
4 Why Do People Become Islamic Extremists?  
5 He Wants You  
6 Israel's Legal Founding  
7 Pakistan: Can Sharia and Freedom Coexist?  
8 The World's Most Persecuted Minority: Christians  
9 Why America's Military Must Be Strong  
10 Born to Hate Jews  
11 PragerU Live: David French  
12 Ten Commandments: 6. Do Not Murder  
13 Israel: The World's Most Moral Army  
14 Why America Invade Iraq  
15 Gender Identity: Why All the Confusion?  
16 Gun Rights Are Women's Rights  
17 **Demonetized (As of October 2017):**  
18 PragerU: Short Videos. Big Ideas — posted by Noah? 082517  
19 Fireside Chat with Dennis Prager (8/4/17)  
20 Fireside Chat with Dennis Prager! (7/20/17)  
21 Is the Death Penalty Ever Moral?  
22 Fireside Chat With Dennis Prager! (6/20/17)  
23 Fireside Chat With Dennis Prager! (7/13/17)  
24 PragerU Live: Sidney Powell (6/22/17)  
25 PragerU Live: David French (6/20/17)  
26 Interview with Nigerian Senator Ben MurrayBruce  
27 Interview with Jason Kenney (5/26/17)  
28



1 Islam and Terrorism (5/23/17)  
2 Why Isn't Communism as Hated as Nazism?  
3 PragerU: PragerU Live: Dana Perino (4/6)  
4 Fireside Chat With Dennis Prager & Special Guest Ben Shapiro! (3/16/17)  
5 PragerU Live with Dr. Jordan Peterson (3/16/17)  
6 Fireside Chat with Dennis Prager (3/9/17)  
7 PragerU Live: We're interviewing "Day Without a Woman" protesters! (3/8/17)  
8 PragerU Live: It's Day Without a Woman! (3/8/17)  
9 Fireside Chat with Dennis Prager! (Jan. 26, 2017)  
10 PragerU Live: Bret Stephens (2/3/17)  
11 PragerU Live: Tom Shillue (2/14/17)  
12 PragerU Live: Christina Hoff Sommers (3/6/17)  
13 PragerU Live: Dave Rubin (10/21/16)  
14 PragerU Live: Felipe Moura Brasil (2/20/17)  
15 PragerU Live: Raymond Ibrahim (2/17/17)  
16 PragerU Live: Dennis Prager and Adam Carolla!  
17 What's Holding the Arab World Back?  
18 Joe Everson's Artistic National Anthem  
19 Is Islam a Religion of Peace?  
20 Are The Police Racist?  
21 Why Don't Feminists Fight for Muslim Women?  
22 Who's More ProChoice:  
23 Europe or America?  
24 What ISIS Wants  
25 Radical Islam: The Most Dangerous Ideology  
26 The Most Important Question About Abortion  
27 Why Do People Become Islamic Extremists?  
28

1 Should America be the World's Policeman?

2 Don't Judge Blacks Differently

3 Israel's Legal Founding

4 Pakistan: Can Sharia and Freedom Coexist?

5 Ten Commandments: 6. Do Not Murder

6 Aznar on Europe, America and Israel

7 66. On October 12, 2017, Google/YouTube admitted that the manual reviews they  
 8 conducted on some of these videos were in fact "human reviews," leaving little doubt that the  
 9 restrictions and demonetization of PragerU videos were not merely the result of an automated  
 10 algorithm error. But Google/YouTube declined to provide any explanation for why the videos were  
 11 restricted or demonetized because they purportedly "can't share more details about our review  
 12 process, as doing so could benefit channels that do not play by the rules (those who game the  
 13 system)."

14 67. This practice of arbitrary and capricious censorship and restriction of speech continues  
 15 to this day against PragerU. Indeed, in October, 2017, Google/YouTube discontinued PragerU's ad  
 16 grants account for over six days. When PragerU requested that Google/YouTube reconsider,  
 17 Google/YouTube responded: "No chance." Then, with an inconsistent and changed explanation,  
 18 Defendants reinstated PragerU's ad grants account but continued to restrict, demonetize, and/or  
 19 change restricted mode classifications of PragerU videos at their whim.

20 68. Even when Google/YouTube attempt to provide an explanation for why they are  
 21 restricting PragerU content, the explanations are vague and illogical pretexts that further confirm the  
 22 arbitrary and capricious nature of the censorship. By way of example only, Google/YouTube  
 23 informed PragerU that the videos "Why Isn't Communism as Hated as Nazism?" and "What's  
 24 Holding the Arab World Back?" were placed in Restricted Mode because they purportedly discussed  
 25 "hate and genocide" and "terrorism and genocide," respectively. No further explanation as to what  
 26 language constituted an inappropriate discussion of "hate and genocide" or "terrorism and genocide"  
 27 was given. But to the extent that Google/YouTube's policy is to restrict all videos that mention the  
 28

1 words “hate,” “terrorism,” or “genocide,” or any video that mentions those topics, then  
 2 Google/YouTube need to explain why thousands of videos that use or mention those terms are not  
 3 also restricted.

4 69. Furthermore, a review of those two videos (available by hyperlink in the Comparative  
 5 Table embedded at paragraph 72, *infra*) shows that Google/YouTube’s explanation for restricting  
 6 them is either false and misleading or is based on its discriminatory animus towards PragerU. Again,  
 7 each of those videos discusses topics in the same manner and using the same language and  
 8 educational format as other videos that are not restricted. Indeed, the only discernible difference  
 9 between the language and the format of the censored videos and non-censored videos is the political  
 10 viewpoint of the speaker: the former provides a conservative political perspective on the issues while  
 11 the latter uses those terms to provide a liberal bent.

12 70. Finally, PragerU is informed and believes that content from its restricted videos has  
 13 been copied and used by other speakers to post videos that are not restricted by Google/YouTube.  
 14 Specifically, PragerU is informed and believes that content from the following videos that it has  
 15 produced and uploaded to YouTube and that Google/YouTube has subsequently restricted, was not  
 16 restricted after it was copied and posted by other content providers or vloggers:

17 Why Don't Feminists Fight For Muslim Women?  
 18 [https://www.youtube.com/watch?v=c\\_qV7ya03sU](https://www.youtube.com/watch?v=c_qV7ya03sU)

19 The Least Diverse Place in America  
 20 <https://www.youtube.com/watch?v=mO-CrOvepU0>

21 Why America Must Lead  
 22 [https://www.youtube.com/watch?v=IreFjN\\_J-l0](https://www.youtube.com/watch?v=IreFjN_J-l0)

23 What's Holding the Arab World Back?  
 24 <https://www.youtube.com/watch?v=04UExoJtpN0>

25 6th Commandment: Do Not Murder  
 26 <https://www.youtube.com/watch?v=rbTvXX3Csq8>

27 The World's Most Persecuted Minority: Christians  
 28 <https://www.youtube.com/watch?v=GHBu2aevyak>

Is Islam a Religion of Peace?  
<https://www.youtube.com/watch?v=B-8f-FjLwRs>

Immigrants! Don't Vote for What You Fled

<https://www.youtube.com/watch?v=szwhSdd3Dno>

Who NOT to Vote For

<https://www.youtube.com/watch?v=Lnub5IDKUhc>

Are 1 in 5 Women Raped at College?

<https://www.youtube.com/watch?v=-HEe6JFRJn0>

71. Consequently, identical content exists on YouTube in both restricted and unrestricted videos, the only difference being that the restricted video was posted by PragerU whereas the copycat video was posted by other speakers or posters of video content with differing political identities and viewpoints.

72. Unable to get a clear and consistent explanation of why certain videos were classified, PragerU undertook an extensive comparative analysis of its videos that were restricted and those on similar topics by different speakers that were not<sup>2</sup>. As of the date of filing of this lawsuit, the analysis shows, there is no rational or reasonable basis to make the distinction:

Video:	Link:	Channel:
PragerU Video Restricted: Are 1 in 5 women in college raped?	<a href="https://www.youtube.com/watch?v=K0mzqL50I-w&amp;t=225s">https://www.youtube.com/watch?v=K0mzqL50I-w&amp;t=225s</a>	PragerU
<b>Similar YouTube videos not restricted:</b>		
Real Time with Bill Maher: The Hunting Ground (HBO)	<a href="https://www.youtube.com/watch?v=JINxoR-S5To">https://www.youtube.com/watch?v=JINxoR-S5To</a>	Real Time With Bill Maher
Your vagina is not a car: Clementine Ford at TEDxSouthBankWomen	<a href="https://www.youtube.com/watch?v=ATISgVUKetI">https://www.youtube.com/watch?v=ATISgVUKetI</a>	TEDx Talks
Full Interview: Joe Biden on How to End the Rape Crisis Plaguing College Campuses	<a href="https://www.youtube.com/watch?v=Vkh_cY3-aTw">https://www.youtube.com/watch?v=Vkh_cY3-aTw</a>	Mic
Author Jon Krakauer on new book "Missoula" and college rape epidemic	<a href="https://www.youtube.com/watch?v=nGI9K20QCgs">https://www.youtube.com/watch?v=nGI9K20QCgs</a>	CBS This Morning
A Life Of Rape Culture   Brynne Thomas   TEDxYouth@TCS	<a href="https://www.youtube.com/watch?v=oYppe9kyUxY">https://www.youtube.com/watch?v=oYppe9kyUxY</a>	TEDx Talks
Lady Gaga sings about campus rape	<a href="https://www.youtube.com/watch?v=ogoq6ddJsMU">https://www.youtube.com/watch?v=ogoq6ddJsMU</a>	ABS-CBN News
PragerU Video Restricted: Why did America Fight the Korean War?	<a href="https://www.youtube.com/watch?v=t44SbOvjEUM">https://www.youtube.com/watch?v=t44SbOvjEUM</a>	PragerU
<b>Similar YouTube videos not restricted:</b>		
Why Korea Split Into North and South Korea	<a href="https://www.youtube.com/watch?v=l0E9Kel8BtE">https://www.youtube.com/watch?v=l0E9Kel8BtE</a>	Wonder Why
Cold War in 9 Minutes	<a href="https://www.youtube.com/watch?v=wVqziNV7dG_Y">https://www.youtube.com/watch?v=wVqziNV7dG_Y</a>	John D Ruddy

<sup>2</sup> This chart was accurate as of October 23, 2017, however, due to the inconsistent application of Restricted Mode status, some of these videos may have become either restricted or non-restricted at the time of review.

Video:	Link:	Channel:
Korean War overview   The 20th century   World history   Khan Academy	<a href="https://www.youtube.com/watch?v=MEGyRgYJKE">https://www.youtube.com/watch?v=MEGyRgYJKE</a>	Khan Academy
The Korean War: Every Day	<a href="https://www.youtube.com/watch?v=fBeiD6kGugE">https://www.youtube.com/watch?v=fBeiD6kGugE</a>	EmperorTigerstar
The Korean "War" Explained: US History Review	<a href="https://www.youtube.com/watch?v=okQzZhL81tE">https://www.youtube.com/watch?v=okQzZhL81tE</a>	Keith Hughes
PragerU Video: Why don't feminists fight for muslim women?	<a href="https://www.youtube.com/watch?v=wJkFQohIKNI">https://www.youtube.com/watch?v=wJkFQohIKNI</a>	PragerU
<b>Similar YouTube videos not restricted:</b>		
Are Islam and Feminism Mutually Exclusive   Get Real   Refinery29	<a href="https://www.youtube.com/watch?v=0Vduu3_c5xo">https://www.youtube.com/watch?v=0Vduu3_c5xo</a>	Refinery29
What Islam really says about women   Alaa Murabit	<a href="https://www.youtube.com/watch?v=FETryXMpDI8">https://www.youtube.com/watch?v=FETryXMpDI8</a>	TED
ADVICE TO MUSLIM WOMEN (About Dajjal) - Tim Humble Animated	<a href="https://www.youtube.com/watch?v=KnBD7pTAqj8">https://www.youtube.com/watch?v=KnBD7pTAqj8</a>	Practical Islam
What Does It Mean To Be A Feminist In Islam?	<a href="https://www.youtube.com/watch?v=MpdXrKqWx14">https://www.youtube.com/watch?v=MpdXrKqWx14</a>	NowThis World
What The West Gets Wrong About Muslim Women	<a href="https://www.youtube.com/watch?v=IzKyZS8Y6IY">https://www.youtube.com/watch?v=IzKyZS8Y6IY</a>	NowThis World
PragerU Video: Are the police racist?	<a href="https://www.youtube.com/watch?v=UQCQFH5wOJo">https://www.youtube.com/watch?v=UQCQFH5wOJo</a>	PragerU
<b>Similar YouTube videos not restricted:</b>		
How to Deal with the Police   Parents Explain	<a href="https://www.youtube.com/watch?v=coryt8IZ-DE">https://www.youtube.com/watch?v=coryt8IZ-DE</a>	WatchCut Video
Keith Lamont Scott's Brother-in-Law: The Role of Racism in Police Shootings	<a href="https://www.youtube.com/watch?v=M0sgKs7PUU8">https://www.youtube.com/watch?v=M0sgKs7PUU8</a>	OWN
Real Time with Bill Maher: A System of Racism (HBO)	<a href="https://www.youtube.com/watch?v=QNIkrnsZ5N0">https://www.youtube.com/watch?v=QNIkrnsZ5N0</a>	Real Time with Bill Maher
FIRST PRESSER! Seahawks Michael Bennett speaks on racism and police brutality allegations	<a href="https://www.youtube.com/watch?v=HI6I1U-MsTw">https://www.youtube.com/watch?v=HI6I1U-MsTw</a>	ABC15 Arizona
Meeting addresses racism in police and fire departments	<a href="https://www.youtube.com/watch?v=AxpKW74EtAY">https://www.youtube.com/watch?v=AxpKW74EtAY</a>	TheDay
Looking Back At Ferguson And Jon Stewart: Real Talk With AJ+	<a href="https://www.youtube.com/watch?v=XSx2TuuoDB0">https://www.youtube.com/watch?v=XSx2TuuoDB0</a>	AJ+ (Al Jazeera)
PragerU Video: Who NOT to Vote For	<a href="https://www.youtube.com/watch?v=eE6ica0t95Q">https://www.youtube.com/watch?v=eE6ica0t95Q</a>	PragerU
<b>Similar YouTube videos not restricted:</b>		
Vote For Jeremy Corbyn?	<a href="https://www.youtube.com/watch?v=wFs-HFSO3A8">https://www.youtube.com/watch?v=wFs-HFSO3A8</a>	Lex Croucher
PragerU Video: Do not murder	<a href="https://www.youtube.com/watch?v=0RENPaY043o">https://www.youtube.com/watch?v=0RENPaY043o</a>	PragerU
<b>Similar YouTube videos not restricted:</b>		
Justice: What's The Right Thing To Do? Episode 01 "THE MORAL SIDE OF MURDER"	<a href="https://www.youtube.com/watch?v=kBdfcR-8hEY">https://www.youtube.com/watch?v=kBdfcR-8hEY</a>	Harvard University
6th Commandment: Do Not Murder (IDENTICAL VIDEO TO OURS UNRESTRICTED)	<a href="https://www.youtube.com/watch?v=rbTvXX3Csq8">https://www.youtube.com/watch?v=rbTvXX3Csq8</a>	Jack Kern
PragerU Video: Did Bush Lie About Iraq?	<a href="https://www.youtube.com/watch?v=LgQw8EhPJWw">https://www.youtube.com/watch?v=LgQw8EhPJWw</a>	PragerU

Video:	Link:	Channel:
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Communism vs. Socialism: What's The Difference?	<a href="https://www.youtube.com/watch?v=FrtdZ-LOXFw">https://www.youtube.com/watch?v=FrtdZ-LOXFw</a>	NowThis World
What Is Communism?	<a href="https://www.youtube.com/watch?v=qElx_EyTTKA">https://www.youtube.com/watch?v=qElx_EyTTKA</a>	NowThis World
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The Economics of Immigration: Crash Course Econ #33	<a href="https://www.youtube.com/watch?v=4XQXiCLzyAw">https://www.youtube.com/watch?v=4XQXiCLzyAw</a>	Crash Course
Why a Wall Won't Stop Immigration	<a href="https://www.youtube.com/watch?v=K_P9PR5ckFk">https://www.youtube.com/watch?v=K_P9PR5ckFk</a>	College Humor
Why Walls Won't Secure The U.S.-Mexico Border   AJ+	<a href="https://www.youtube.com/watch?v=Yh3fez9CyXg">https://www.youtube.com/watch?v=Yh3fez9CyXg</a>	AJ+
PragerU Video: Born to Hate Jews	<a href="https://www.youtube.com/watch?v=xCQEmeGfFmY">https://www.youtube.com/watch?v=xCQEmeGfFmY</a>	PragerU
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How Islam Began - In Ten Minutes	<a href="https://www.youtube.com/watch?v=PDxKxnVZtgo">https://www.youtube.com/watch?v=PDxKxnVZtgo</a>	TrueTube
Chris Hayes: If This Isn't Terrorism, What Is?   All In   MSNBC	<a href="https://www.youtube.com/watch?v=-Ux6MXQQLpA">https://www.youtube.com/watch?v=-Ux6MXQQLpA</a>	MSNBC
The Untold History - How Islam Spread	<a href="https://www.youtube.com/watch?v=a8CbEzcOX3M">https://www.youtube.com/watch?v=a8CbEzcOX3M</a>	MercifulServent
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Why Ireland split into the Republic of Ireland & Northern Ireland	<a href="https://www.youtube.com/watch?v=dCJMQgfHXNI">https://www.youtube.com/watch?v=dCJMQgfHXNI</a>	WonderWhy
Why Korea Split Into North and South Korea	<a href="https://www.youtube.com/watch?v=l0E9Kel8BtE">https://www.youtube.com/watch?v=l0E9Kel8BtE</a>	WonderWhy
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Why Isn't Palestine A State Yet?	<a href="https://www.youtube.com/watch?v=Dyqx7CDGrTA">https://www.youtube.com/watch?v=Dyqx7CDGrTA</a>	NowThis World
PragerU Video: The least Diverse Place in America	<a href="https://www.youtube.com/watch?v=y0HKgs-0zDY">https://www.youtube.com/watch?v=y0HKgs-0zDY</a>	PragerU
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Why is Hollywood so White?   Colin Stokes   TEDxBeaconStreet	<a href="https://www.youtube.com/watch?v=OyM-2_5cmkA">https://www.youtube.com/watch?v=OyM-2_5cmkA</a>	TEDx Talks
The Oscars' horrible lack of diversity, explained in 2 minutes	<a href="https://www.youtube.com/watch?v=oiets7KOnY4">https://www.youtube.com/watch?v=oiets7KOnY4</a>	Vox
PragerU Video: The most important question on abortion	<a href="https://www.youtube.com/watch?v=AMwkQVpy98A">https://www.youtube.com/watch?v=AMwkQVpy98A</a>	PragerU
PragerU Video: Who is more pro-choice? Europe or America?	<a href="https://www.youtube.com/watch?v=IHrihwWJv8o">https://www.youtube.com/watch?v=IHrihwWJv8o</a>	PragerU
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Aspen Baker: A better way to talk about abortion	<a href="https://www.youtube.com/watch?v=P5Mpo4JQZhw">https://www.youtube.com/watch?v=P5Mpo4JQZhw</a>	TED
Stacey and Coleen Share Their Abortion Experiences   Loose Women	<a href="https://www.youtube.com/watch?v=cMtCYVJ6trI">https://www.youtube.com/watch?v=cMtCYVJ6trI</a>	Loose Women
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That Moment You Realize You're Transgender	<a href="https://www.youtube.com/watch?v=P-hj5gZwzow">https://www.youtube.com/watch?v=P-hj5gZwzow</a>	SoulPancake
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Jazz and Her Grandpa Argue About Being Transgender   I Am Jazz	<a href="https://www.youtube.com/watch?v=NgG8vwRVvktk">https://www.youtube.com/watch?v=NgG8vwRVvktk</a>	tlc uk
Jazz Debates With Tomi Lahren!   I Am Jazz	<a href="https://www.youtube.com/watch?v=lxZG0oDQRbQ">https://www.youtube.com/watch?v=lxZG0oDQRbQ</a>	tlc uk
Bottom Surgery   I Am Jazz	<a href="https://www.youtube.com/watch?v=lg-U8oFpa8o">https://www.youtube.com/watch?v=lg-U8oFpa8o</a>	tlc uk

Video:	Link:	Channel:
Transgender Teen Shares Powerful Message	<a href="https://www.youtube.com/watch?v=E0v_idyvico">https://www.youtube.com/watch?v=E0v_idyvico</a>	ABC News
Gun Rights Are Women's Rights	<a href="https://www.youtube.com/watch?v=2iKBEJp92CA&amp;t=1s">https://www.youtube.com/watch?v=2iKBEJp92CA&amp;t=1s</a>	PragerU
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Simple Self Defense Moves You Should Know	<a href="https://www.youtube.com/watch?v=M4_8PoRQP8w">https://www.youtube.com/watch?v=M4_8PoRQP8w</a>	Buzzfeedvideo
Top 7 Self Defense Moves that Women Need to Know	<a href="https://www.youtube.com/watch?v=j_YOvLi06-0">https://www.youtube.com/watch?v=j_YOvLi06-0</a>	Poway Personal Trainer
Self Defense Tips & Techniques for Women : Palm Heel Strike to Vital Areas in Women's Self Defense	<a href="https://www.youtube.com/watch?v=e8PMAa2NxFQ">https://www.youtube.com/watch?v=e8PMAa2NxFQ</a>	expertvillage
☆Pepper Spray, Personal Safety, Self Defense Tips for Women☆	<a href="https://www.youtube.com/watch?v=ION8QGej9To">https://www.youtube.com/watch?v=ION8QGej9To</a>	Dr. Tracy Timberlake

73. As the Table demonstrates, there is no rational or reasonably objective basis for treating PragerU video content differently from other speakers. The only difference is that PragerU features speakers and scholars who bring a conservative viewpoint to the issues discussed while the non-restricted videos discuss the same topics from a liberal or left wing perspective. That is discrimination, a violation of the right to free speech, and an unfair business practice for which the law and equity can and will remedy.

### **FIRST CAUSE OF ACTION**

#### **(California Constitution Article I, section 2)**

74. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each of the allegations set forth in paragraphs through 1 through 73 above.

75. Article I, section 2 of the California Constitution protects the liberty of speech and association, especially in public, quasi-public, and limited public spaces.

76. In YouTube, Defendants created and maintain a public forum or its functional equivalent for the public to express and exchange views and ideas, or in the alternative at least a quasi- or limited public forum. Defendants further act as state actors because Defendants and the YouTube site perform an exclusively and traditionally public function by regulating free speech within a public forum. Accordingly, speech cannot be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on the basis of viewpoint or the identity of the speaker.

1           77. Plaintiff's videos, which are designed to educate the public, adults and minors alike,  
2 on historical events, philosophy, economics, and current events, constitute expressive speech and  
3 activity protected by Article I, section 2 of the California constitution.

4           78. Defendants have restricted Plaintiff's speech and expressive conduct based on  
5 subjective, vague, and overbroad criteria that give Defendants unfettered and unbridled discretion to  
6 censor speech for any or no reason, no matter how arbitrary or capricious. Those criteria further fail  
7 to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited or  
8 restricted. Defendants' adoption and application of those criteria on its face violates PragerU's right  
9 to free speech as guaranteed by Article I, section 2 of the California Constitution. Further, that  
10 invidious potential has been borne out and evidenced by Defendants' application of those policies and  
11 procedures to censor PragerU. PragerU has repeatedly asked what it could do differently, or how it  
12 could change its videos so that they could be unrestricted or re-monetized, but Google/YouTube have  
13 never meaningfully answered those questions.

14           79. Defendants also apply their censorship criteria, including the Terms of Use and  
15 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the content  
16 of the speech but because of PragerU's identity and political viewpoints. Defendants have restricted  
17 content posted by PragerU to the YouTube platform but not restricted similar or identical video  
18 content, including identical video content initially produced by PragerU but subsequently copied and  
19 then uploaded and posted on the YouTube site by other speakers. Defendants' application of criteria  
20 and corresponding restraints on PragerU's speech is arbitrary and capricious and/or is based on  
21 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual  
22 content of the speech.

23           80. Further, because Plaintiff is so restrained and punished because of the speakers  
24 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and violate  
25 Plaintiff's right to free association and assembly. Defendants' actions also violate Plaintiff's right to  
26 free association and assembly by blocking viewers' access to videos and comments.

27           81. No compelling, significant, or legitimate reason justifies Defendants' actions. Even if  
28

1 such interests did exist to justify Google/YouTube's restriction and demonetization rules generally,  
 2 the restrictions imposed on Plaintiff's speech are not narrowly or reasonably tailored to further such  
 3 interests, because they sweep within their ambit inoffensive and non-graphic discussions intended and  
 4 designed for educational purposes. Given Google/YouTube's monopolistic control over search  
 5 results, including video search results as well as online video streaming, Plaintiff has no alternative  
 6 affording it a reasonable opportunity to reach its full intended audience.

7 82. Google/YouTube's discriminatory policies and application of those policies are not  
 8 viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to  
 9 the nature, purpose, and use of the forum. They impose an unreasonable prior restraint on Plaintiff's  
 10 protected political speech, motivated by impermissible discrimination against Plaintiff's identity and  
 11 viewpoint.

12 83. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are  
 13 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through  
 14 both the Google/YouTube algorithms as well as human agents. And Defendants' actions were done  
 15 with the intent to deprive Plaintiff and their viewers of their rights under the California constitution.

16 84. As a direct and proximate result of Defendants' violations of clearly established law  
 17 regarding public fora, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury  
 18 in fact, including lost income, reduced viewership, and damage to brand, reputation, and goodwill, for  
 19 which there exists no adequate remedy at law.

## 20 **SECOND CAUSE OF ACTION**

### 21 **(First Amendment of the United States Constitution and/or 42 U.S.C. § 1983)**

22 85. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each  
 23 of the allegations set forth in paragraphs through 1 through 84 above.

24 86. The First Amendment of the United States Constitution protects the freedom of speech  
 25 and association, and against viewpoint discrimination in the access and use of public spaces, quasi-  
 26 public spaces, and limited public spaces. It also protects the rights of all Americans to free  
 27 association with others.

1           87. Defendants created, operate and control the YouTube site, platform and services as a  
2 public forum or its functional equivalent by intentionally and openly dedicating YouTube for public  
3 use and public benefit, inviting the public to utilize YouTube as a forum for free speech. Defendants  
4 further act as state actors because Defendants and the YouTube site perform an exclusively and  
5 traditionally public function by regulating free speech within a public forum. Accordingly, speech  
6 cannot be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on YouTube  
7 on the basis of viewpoint or the identity of the speaker.

8           88. Defendants' actions, and the actions of their agents, deprive Plaintiff of its  
9 constitutional rights. Defendants have restricted Plaintiff's speech and expressive conduct by  
10 adopting and applying subjective, vague, and overbroad criteria that give Defendants unfettered and  
11 unbridled discretion to censor speech for arbitrary, capricious, or nonexistent reasons. Those criteria  
12 further fail to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited  
13 or restricted and, as a result, allow Defendants to censor speech at their whim and based on their  
14 subjective animus towards the speaker or her particular political or religious viewpoint.

15           89. Defendants also apply their censorship criteria, including the Terms of Use and  
16 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the content  
17 of the speech but because of PragerU's identity and political viewpoints. Defendants have restricted  
18 content posted by PragerU to the YouTube platform but not restricted similar or identical video  
19 content, including identical video content initially produced by PragerU but subsequently copied and  
20 then uploaded and posted on the YouTube site by other speakers. Defendants' application of criteria  
21 and corresponding restraints on PragerU's speech is arbitrary and capricious and/or is based on  
22 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual  
23 content of the speech.

24           90. Further, because Plaintiff is so restrained and punished because of the speakers  
25 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and violate  
26 Plaintiff's right to free association and assembly. Defendants' actions also violate Plaintiff's right to  
27 free association and assembly by blocking viewers' access to videos and comments. And  
28



1 Defendants' actions were done with the intent to deprive Plaintiff and other conservative voices of  
2 their First Amendment rights.

3 91. No compelling, significant, or legitimate reason justifies demonetizing or restricting  
4 Plaintiff's videos. Even if such interests did exist to justify Google/YouTube's restriction and  
5 demonetization rules generally, the restrictions imposed on Plaintiff's speech are not narrowly or  
6 reasonably tailored to further such interests, because they sweep within their ambit inoffensive and  
7 non-graphic discussions intended and designed for educational purposes. Given Google/YouTube's  
8 monopolistic control over search results, including video search results, as well as online video  
9 streaming, Plaintiff has no alternative channel affording a reasonable opportunity to reach its full  
10 intended audience.

11 92. Google/YouTube's discriminatory policies and application of those policies are not  
12 viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to  
13 the nature, purpose, and use of the forum. Rather, they impose an unreasonable prior restraint on  
14 Plaintiff's protected political speech, motivated by impermissible discrimination against Plaintiff's  
15 identity and viewpoint.

16 93. As a direct and proximate result of Defendants' violations of the clearly established  
17 law of public fora, Plaintiff suffered and continues to suffer immediate and irreparable injury in fact,  
18 including lost income, decreased viewership, and damage to brand and reputation, for which there  
19 exists no adequate remedy at law.

20 94. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are  
21 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through  
22 both the Google/YouTube algorithms as well as human agents.

### 23 **THIRD CAUSE OF ACTION**

#### 24 **(California Unruh Civil Rights Act—Civil Code §§ 51, et seq.)**

25 95. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each  
26 of the allegations set forth in paragraphs through 1 through 94 above.

27 96. Defendants YouTube and Google host business establishments under the Unruh Civil  
28



1 Rights Act, California Civil Code § 51 et seq. Defendants grant the public unrestricted access to  
2 YouTube for commercial reasons that are at the core of their business model and the source of  
3 virtually all of their revenue.

4 97. Despite their promises of neutrality and a diversity of viewpoints, Defendants engage  
5 in a pattern and practice of intentional discrimination in the provision of their services, including  
6 discriminating against and censoring Plaintiff PragerU's speech based not on the content of speech  
7 but on its political identity and viewpoint. Through the acts complained of herein, Defendants  
8 intentionally denied, and aided or incited in denying, Plaintiff full and equal accommodations,  
9 advantages, privileges, and services by refusing discriminating against it in administering the  
10 YouTube grants program, demonetizing Plaintiff's content, and by placing Plaintiff's videos in  
11 Restricted Mode.

12 98. A substantial motivating reason for Defendants' conduct is Defendants' subjective  
13 perception of Plaintiff's political identity, viewpoints, and religious orientation, as well as those of  
14 others with whom Plaintiff associated. Defendants' discrimination against Plaintiff is arbitrary,  
15 capricious, pretextual, and discriminatory. It is also wholly without any legitimate, reasonable  
16 business interest, as the content of the restricted and demonetized PragerU videos are completely  
17 compliant with the letter and spirit of Defendants' Terms of Use and Community Guidelines.  
18 Google/YouTube are censoring and treating Plaintiff and its videos differently out of animus towards  
19 Plaintiff's identity and views.

20 99. Defendants' wrongful actions were taken with oppression, fraud and/or malice,  
21 effectuated through both the Google/YouTube algorithms as well as manual human review of  
22 Plaintiff's videos and appeals. PragerU has repeatedly attempted to remedy the situation, and  
23 Defendants have repeatedly refused to unrestrict or re-monetize Plaintiff's videos. And not once have  
24 Defendants articulated any good faith reason for their differential treatment.

25 100. As a direct and proximate result of Defendants' unlawful discriminatory actions,  
26 Plaintiff suffered, and continues to suffer, irreparable injury in fact, including but not limited to lower  
27 viewership, lost advertising opportunities otherwise available to other nonprofits, decreased ad  
28

1 revenue, and reputational damage, for which there exists no adequate remedy at law.

2 101. Defendants' violations of the Unruh Act further entitles Plaintiff to recover statutory  
3 damages of up to three times the amount of actual damages in an amount to be proven at trial, or a  
4 minimum of \$4,000 per violation.

#### 5 **FOURTH CAUSE OF ACTION**

##### 6 **(Business and Professions Code § 17200, et seq.)**

7 102. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each  
8 of the allegations set forth in paragraphs through 1 through 101 above.

9 103. Defendants have committed acts of unfair competition, as defined by Business and  
10 Professions Code § 17200, by engaging in the practices described above.

11 104. Defendants' policies and practices, and their application of the same to Plaintiff,  
12 constitute unlawful, unfair or fraudulent business acts or practices within the meaning of Business  
13 and Professions Code § 17200. Defendants' policies, as well as their application, violate the policy  
14 and spirit the Unruh Act, the Lanham Act, the California and federal Constitutions, and prior court  
15 decisions. Those actions are likely to mislead the public, and do mislead the public, about YouTube,  
16 Defendants' videos, Plaintiff, and Plaintiff's videos. Content creators, advertisers, and viewers trust  
17 and rely on Defendants for an open marketplace of ideas and expression, and further that when videos  
18 are restricted or demonetized, that those videos are truly and in good faith deemed inappropriate for  
19 viewing by minors or sensitive viewers.

20 105. There is no utility to the public for Defendants' actions, where those restrictions  
21 violate no laws or contractual terms of use and treat Plaintiff and others similarly situated simply  
22 because of their perceived politics and identity of their speaker. And to the extent that any utility to  
23 Defendants' arbitrarily- and discriminatorily-applied policies did exist, that utility is significantly  
24 outweighed by the harm they impose on consumers and the public. Defendants have alternatives to  
25 this conduct that would be less harmful to consumers, but do not adopt or apply them because of their  
26 bias against Plaintiff and others similarly situated.

27 106. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and  
28

continues to suffer, immediate and irreparable injury in fact, including lost income, reduced viewership, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law.

107. Defendants' wrongful actions were taken with oppression, fraud and/or malice.

### **FIFTH CAUSE OF ACTION**

#### **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

108. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each of the allegations set forth in paragraphs through 1 through 107 above.

109. Plaintiff and Defendants entered into written contracts in which Defendants agreed to provide YouTube access, hosting, streaming, and advertising services to Plaintiff. Those contracts give Google/YouTube vague, unfettered, and unilateral discretion to remove, restrict, demonetize, or de-emphasize content as Defendants see fit.

110. Implied in those contracts is the implied covenant of good faith and fair dealing. This is particularly true because, in those contracts, Defendants assumed for themselves unilateral and unfettered discretionary control over virtually every aspect of their relationship with Plaintiff—control that Defendants have exercised at their whim, repeatedly and without notice to Plaintiff, and without an opportunity for meaningful discussion or appeal. To the extent that those discretionary powers are valid, Defendants are obligated to exercise them fairly and in good faith.

111. Plaintiff did all or substantially all of the significant things required of it under its agreements with Defendants, or was excused from having to do those things. None of Plaintiff's restricted or demonetized videos violates the letter or spirit of any term in Plaintiff's contracts with Defendants.

112. Defendants were bound by the implied covenant of good faith and fair dealing in their agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would impair or diminish Plaintiff's rights and benefits of the parties' agreements. Pursuant to the terms of those agreements, Plaintiff was supposed to have equal access to a wide audience to promote its messages, and it was in reliance on Defendants' representations to "help you grow," "discover what works best

1 for you,” and “giv[e] you tools, insights and best practices for using your voice and videos,” that it  
 2 chose YouTube as the host of its videos. Also pursuant to those agreements, it was entitled to some  
 3 portion of the profits that Defendants were making from Plaintiff’s content. Instead,  
 4 Google/YouTube have, by the acts and omissions complained of herein, intentionally and tortiously  
 5 breached the implied covenant of good faith and fair dealing by unfairly interfering with Plaintiff’s  
 6 rights to receive the benefits of those contracts.

7 113. The foregoing acts and omissions were engaged in by Defendants with the knowledge  
 8 that they were bound to act consistently with the covenant of good faith and fair dealing. Those acts  
 9 and omissions were not only failures to act fairly and in good faith, but they were acts of oppression,  
 10 fraud, and malice.

11 114. As a direct and proximate result of the aforementioned conduct of Defendants,  
 12 Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact, including lost  
 13 income, reduced viewership, and damage to brand, reputation, and goodwill, for which there exists no  
 14 adequate remedy at law.

### 15 **SIXTH CAUSE OF ACTION**

#### 16 **(Lanham Act—15 U.S.C. § 1125 et seq.)**

17 115. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each  
 18 of the allegations set forth in paragraphs through 1 through 114 above.

19 116. Google/YouTube are engaged in interstate commerce and competition through  
 20 hosting, creating, advertising, and soliciting and receiving revenue for advertising, video streaming  
 21 services on YouTube.com. In addition, Google/YouTube compete with content creators like Plaintiff  
 22 in the market of online video streaming by creating, hosting, and promoting their own video content.

23 117. Defendants engage in a pattern and practice of knowingly misleading and deceptive  
 24 advertisement and unfair competition. Defendants advertise YouTube, as a word, term, name,  
 25 symbol, and device, as a forum for open expression by diverse speakers. Defendants unfairly and  
 26 deceptively misrepresent the nature, characteristics, and qualities of YouTube’s services and  
 27 commercial activities as an equal and diverse public forum. Defendants likewise unfairly enhance the  
 28

1 image and goodwill of their content, while degrading Plaintiff and its videos by suggesting that  
 2 Plaintiff and its speech are offensive, hateful, or inappropriate.

3 118. Defendants' false representations and unfair competition deceived, and had a tendency  
 4 to deceive, substantial segments of Defendants' audiences, including content creators like Plaintiff,  
 5 viewers, and advertisers, who are induced to traffic and do business with YouTube, and to view (or  
 6 not view) particular videos. As a direct and proximate result of Defendants' actions complained of  
 7 herein, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact,  
 8 including in the form of lower viewership, decreased ad revenue, a reduction in advertisers willing to  
 9 purchase advertisements shown on Plaintiff's videos, diverted viewership, and damage to its brand,  
 10 reputation and goodwill.

11 119. Defendants' wrongful actions were taken with oppression, fraud and/or malice.  
 12 PragerU has repeatedly attempted to remedy the situation, and Defendants have repeatedly refused to  
 13 unrestrict or re-monetize Plaintiff's videos. And not once have Defendants articulated any reason for  
 14 their differential treatment. Their treatment of videos like those of PragerU's is part of their normal  
 15 course of business, effectuated through both the Google/YouTube algorithms as well as their agents  
 16 manually reviewing Plaintiff's videos and appeals.

## 17 **SEVENTH CAUSE OF ACTION**

### 18 **(Declaratory Relief)**

19 120. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each  
 20 of the allegations set forth in paragraphs through 1 through 119 above.

21 121. An actual controversy exists between Plaintiff and Defendants as to whether  
 22 Defendants' policies and procedures, and their application thereof, violate the Unruh Civil Rights  
 23 Act, the Lanham Act, and the California and federal constitutions. The correct interpretation is that  
 24 Defendants' policies and procedures, facially and as applied, violate the Unruh Act, the Lanham Act,  
 25 and violate Plaintiff's speech and association rights under both the California and United States  
 26 constitutions.

27 122. Unless the court issues an appropriate declaration of rights, the parties will not know  
 28

whether Defendants' policies and procedures, and Defendants' application of their policies and procedures, comply with the law, including the federal and state constitutions, and there will continue to be disputes and controversy surrounding Defendants' policies and procedures and application thereof.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

1. For a declaratory judgment that Defendants have violated and continue to violate PragerU's free speech rights, both facially and as applied, under the First Amendment of the United States Constitution, and/or Article I, section 2 of the California Constitution;

2. For an injunction requiring Defendants to (i) cease and desist from capriciously restricting, demonetizing, or otherwise censoring any content of PragerU videos uploaded to the YouTube site and (ii) from censoring or restricting speech based on their unfettered discretion or the use or application of arbitrary, capricious, vague, unspecified, or subjective criteria guidelines;

3. For compensatory, special, and statutory damages in an amount to be proven at trial, including statutory damages pursuant to, *inter alia*, Civil Code § 51, 51.5, 52, Civil Procedure Code § 1021.5, 15 U.S.C. § 1117, 42 U.S.C. §§ 1981, 1983;

4. A civil penalty of \$2,500 for each violation pursuant to Business and Professions Code §§ 17200, 17206, and 17536;

5. For punitive damages and exemplary damages in an amount to be proved at trial;

6. For restitution of financial losses or harm caused by Defendants conduct and in an amount to be proven at trial;

7. Attorney's fees and costs of suit;

8. For prejudgment and post-judgment interest; and

9. For any and all other relief that the Court deems just and proper.

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Plaintiff demands trial by jury on all issues of law so triable.

Respectfully submitted,

Pete Wilson  
Eric M. George  
Peter Obstler  
David S. Wakukawa

Peter Obstler  
Attorneys for Plaintiff PRAGER UNIVERSITY